

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DR. GRAHAM SHEA, DDS,
Plaintiff

v.

**MANAGEMENT AND TRAINING
CORPORATION,**
Defendant

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Case No. 1:18-CV-00830-SH

ORDER

On August 26, 2021, the Court entered an order sustaining Defendant Management and Training Corporation's ("MTC") Objection to Plaintiff's Exhibit P-63 (Dkt. 60 at 1) and excluded Daniel Clay Purswell's employee file from evidence. Dkt. 61. The Court found that Purswell, as a permanent MTC employee, was not similarly situated to Plaintiff, a probationary employee, under nearly identical circumstances. *Id.* at 1.

During trial, the parties introduced evidence that MTC had an at-will employment arrangement with both its permanent and probationary employees. Plaintiff orally moved for reconsideration of the Court's previous order excluding Plaintiff's Exhibit P-63, given the similarity in Purswell and Plaintiff's terms of employment.

Disparate treatment of a less similarly situated comparator can be considered, despite its lesser probative value. *Brown v. Wal-Mart Stores E., L.P.*, 969 F.3d 571, 580 (5th Cir. 2020). In accordance with the Court's verbal order, **IT IS ORDERED** that the Court's August 26, 2021 Order (Dkt. 61) is **AMENDED IN PART** to admit Plaintiff's Exhibit P-63 into evidence.

SIGNED on September 1, 2021.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE